

ANNEX

Amendments to the draft treaty of friendship, commerce and navigation which was forwarded under cover of Mission despatch 246 of August 16.

In the main, the Japanese draft is in general outline sufficiently close to United States ideas to be an adequate basis for commencing the process of arriving at a mutually agreed final text. In some respects, however, the Japanese draft would need to be amended, if it is so to be used. Such amendments fall into three classes, as described below.

The first type of amendment is of a stylistic order, and is merely desirable rather than essential. It is proposed to substitute the term "companies" for "corporations and associations" wherever used; the simple terms "national treatment" and "most-favored-nation treatment", respectively, with definitions thereof in the definitions Article, for the more lengthy references to these concepts throughout the treaty; and the term "products" for the expression "articles the growth, produce or manufacture". These devices, used in all United States treaties signed subsequent to that with Italy, save a considerable amount of wordage and contribute to concise sentence structure.

The second group of amendments would be the addition, at appropriate points, of several provisions found in most of the recent United States treaties which are missing from the Japanese draft. These include, notably, the following, the texts of which may be found in the enclosed standard draft at the points indicated in parentheses: provision on commercial arbitration (Article V, paragraph 2); rule concerning the treatment of private enterprises which are under competition from state enterprises (Article XVIII, paragraph 2); paragraph on the employment of technical personnel (Article VIII, paragraph 1); paragraph regarding the national treatment of corporations in the United States, in consequence of the nature of the federal system (Article XIII, paragraph 4); provision regarding the impairment of vested rights and interests (Article VI, paragraph 4); and reservations with respect to fissionable materials, United States territorial preferences, and the GATT (Article XXI, paragraphs 1 (d), 2 and 3). Should there be special problems with respect to the GATT in the case of Japan, they can be dealt with during negotiation. Paragraph 4 of Article XXI of the United States draft is also necessary. (It may further be noted that the Department has under consideration the adding of new material to its industrial property article, designed to encourage technological interchanges. Should such a proposal be formulated, it will be presented later.)

The third group of amendments consists of several Articles from the Department's standard draft to be substituted in text for certain Articles of the Japanese draft which diverge so widely from what the Department considers appropriate formulations as to be unsuitable bases for discussion. The substitutions accordingly proposed below are, of course, without prejudice to changes in other provisions in the Japanese version which the Department will wish to introduce during the course of the discussions. Further Japanese study of current United States treaty policy may, indeed, lead the Japanese on their own motion to introduce appropriate secondary revisions in some of their

proposals in advance of the opening of detailed discussions.

Article I of the Japanese draft should be replaced by Article II, paragraphs 1 and 3, of the Department's standard draft. It is not possible for the Department to use a treaty of this kind as a vehicle for wholesale setting aside of United States immigration policy. Treatment is, of course, out of the question; and, since quotas vary widely from country to country, it is not possible to assure even most-favored-nation treatment to any country as a general proposition. It is, however, possible to stipulate most-favored-nation treatment for one special category of entrants, namely, those entering for the purpose of engaging in international trade (i. e., "treaty traders") and who are covered in sub-paragraph (a) of the Department's draft. (The formulation on this subject in the treaty with Ireland, for example, is in most-favored-nation terms). Also, the Department would wish to substitute paragraph 2 (d) and (e) of the same Article of its draft, for Article IV, paragraph 3, of the Japanese draft, because the national treaty proviso of the latter gravely weakens a sound rule on freedom of communication and of reporting.

The Mission is undoubtedly aware that there has been pending in Congress a proposal, patterned after Acts already passed in behalf of the Chinese, Filipinos and others, to remove the existing racial bar to the immigration and naturalization of Japanese. The enactment of this proposal, which is now being considered in connection with a comprehensive revision and recodification of the immigration code, would remove not only the feature of United States immigration policy which the Japanese have found peculiarly objectionable but also the particular disabilities in the land laws of Western states which are in terms of aliens ineligible for citizenship.

Article V should be replaced by Article IV of the Department's standard draft. Interference by treaty with State prerogatives in the control of land policies has historically been a subject of great delicacy. On at least two occasions in the past the Senate has rejected treaties with Western European powers that provided national treatment as to land ownership; and it will be noted that none of the recent treaties signed by the United States (China, Italy, Uruguay, Ireland, Colombia, Greece, Israel, Ethiopia and Denmark) attempts to prescribe State policies with respect to ownership of real property.

On the other hand, it has been acceptable to provide national treatment with respect to the leasing of real property necessary to the conduct of treaty activities, notwithstanding some State laws circumscribing alien leaseholds. The right to lease is a valuable treaty right in the United States, as was stated in the case of the 1911 treaty of commerce and navigation with Japan. The Department, in proposing the formulation in the standard draft, is offering to assure leasehold rights.

With respect to ownership rights, the Department is proposing to deal in a special way: namely, through the "de facto reciprocity" formula first broached in the treaty of 1907 with Siam. This formula, devised in an effort to approach the national treatment ideal as nearly as practicable, provides in effect for reciprocal national treatment on ownership to the extent that the State laws permit.

permit; but it envisages that Japan would be free to withhold this standard of treatment from citizens and corporations of States that do not accord national treatment to Japanese nationals and corporations. A like formula in the 1946 Treaty with China is said to have influenced the States of Nevada and Utah toward ameliorating the Chinese disabilities of their real property laws; and the adoption of the formula in treaties with Japan and other countries would undoubtedly be of pertinence to the reconsideration, now variously evident in the United States, of alien land disabilities still persisting in certain State laws. Expressly anti-Oriental laws have been declared unconstitutional in Arkansas, Oregon and in the lower courts of California; and are understood to have been liberalized by legislative action in Utah and Nevada. In half the States, aliens at present enjoy the same rights as citizens with respect to landholding; and in only a comparatively few States are the disabilities against the generality of aliens of serious proportions insofar as commercial property is concerned.

As to Articles III and VI, attention is invited to Articles VII and VIII of the Department's standard draft, as an improved and definitely preferable approach to the framing of sound rules on the business activities of persons and corporations. It will be noted that the second paragraph of the latter deals with a subject apparently missing from the Japanese draft, but which the Department did not include in the list, given above, of provisions which it proposes be added to the Japanese draft. For other illustrations of treaty drafting deemed to be an improvement over the China and Italy treaties, see Articles VII and VIII of the Colombia Treaty and Articles XII and XIII of the Greek Treaty. The later formulation of the standard draft (upon which the Israel Treaty is incidentally based), it may be emphasized, is considered to be superior to these.

Article IX. It is suggested that the Japanese withdraw this Article altogether. It is no longer the policy of the United States to enter into treaty undertakings to grant exemptions from military service; and treaties most recently negotiated (Uruguay, Colombia, Greece, Israel, Ethiopia and Denmark) therefore contain no military service provisions. The necessity of maintaining this policy in future negotiations is underscored by action Congress took this summer in amending the Selective Service Act so as to make aliens entered for permanent residence henceforth subject to the draft.

Articles XI through XVII. Since the negotiation of the treaty with Italy, the Department has concluded that all essential provisions on navigation can be compressed into the confines of a single Article. (See Article XIX of the Department's standard). The abbreviated formulation now favored by the Department has, aside from the virtue of compactness, the advantage of closing loopholes that might be present in the longer formulation of the Italy Treaty, through application of the inclusio unius exclusio alterius maxim. Substitution of the Department's standard navigation article is therefore requested. It may be noted that material of the sort treated in Article XIV of the Japanese draft is not included in the Department's draft. The formulation of an acceptable treaty rule on this would require some exploration. (Note: the only provision in this convention to which the Department has thus far agreed in any recent commercial treaty negotiation is Article XIII, paragraph 5, of the Treaty with Greece).

Article

Article XXII. Since the negotiation of the treaty with Italy in 1948, on which the Japanese proposal is presumably based, the Department has restudied the whole question of exchange controls, with a view to the formulation of improved rules, especially as the interests of investors are affected. This reformulation, as reflected in Article XII of the Department's standard draft, should be substituted for the Japanese proposal. It may be noted that the major deficiencies of the exchange control article of the 1948 Italian Treaty have now been corrected in a Supplementary Agreement with Italy, signed September 27 of this year (see Article III and IV of same).

Article XXIV. This Article creates difficulties. An agreement in which tariff concessions are made (e.g., a trade agreement) is a more suitable vehicle for this sort of thing than is a treaty of the present sort. The establishment of a general valuation policy, moreover, is more properly the function of a multilateral than a bilateral negotiation. Finally, Congress has indicated opposition to the abandonment of the so-called "American selling price" feature of the United States Customs Law. (Note: The valuation rules set forth in the GATT are only provisional, and are applicable only to the extent that the legislation of each contracting party permits).

Article XXVII. The Department proposes that this Article be deleted, and that in lieu thereof there be inserted in the Protocol a provision tentatively worded as follows:

"With reference to (Article XXXI, paragraph 1 (7)), it is understood that either High Contracting Party may prohibit the importation into its territory or seize, in accordance with the law of such High Contracting Party, any goods of the other High Contracting Party which bear, through labelling, marking, or otherwise, a false indication of geographic or commercial origin or which produce a false impression of their true origin. Each High Contracting Party agrees to take appropriate steps to prevent unfair practices involving false indications of whatever nature, that goods produced or sold in or exported from the territory of such High Contracting Party originate within the territory of the other High Contracting Party or any distinctive place within such territory or are the product of a national of such other High Contracting Party."

The reason for suggesting a Protocol position is that clause (a) of the Japanese Article XXVII (the first sentence of Department redraft) is already covered in the general language of paragraph 1 (7) of Article XXXI of the Japanese draft, and is a specific illustration of the deceptive and unfair practices alluded to therein. The technique suggested avoids possible duplication in a text of the treaty. Another reason for handling the matter in the manner proposed is that the assertion of the right in question, although quite desirable for purposes of emphasis, is strictly speaking superfluous, inasmuch as each Party has this right whether or not the treaty so states.

The second sentence of the Department's counterdraft is a restatement of clause (b), and following, of the Japanese proposal, in what is deemed to be clearer and more meaningful language. It

furthermore

furthermore orients the provision away from the subject of alleged abusive use of what is often known as "distinctive regional and geographical appellations of origin" - e.g., the label "Port" or "Champagne" on vinous beverages not produced in the official Port and Champagne regions of Portugal and France. It is not known that Japan has any name-products of this sort of which she is jealous; and the United States would not wish to undertake to make its own regulations more severe than at present, inasmuch as present regulations do in fact prevent the use of such names in a manner calculated actually to deceive the customer as to the true nature of origin of the product, and the United States has been unable to agree with the very restrictive views on the matter nurtured by some foreign governments.

Article XXX. While this Article is not necessarily objectionable, the Department does not perceive any particular need for its inclusion.

Article XXXII. The Department proposes that this Article should be replaced by Article XXIV of its standard draft which, it will be noted, contains a paragraph on consultation as well as one on the ultimate submission of unresolved disputes to the International Court at the Hague. The development of the standard submission clause, which has been included with Senate approval and without significant alteration in each of the nine treaties of the present sort signed by the United States since World War II, is regarded by the Department as an outstanding achievement of its current treaty program; and its inclusion is the clearest kind of indication that the treaty establishes a rule of law.

The Japanese proposal on this score appears to be ambiguous and inconclusive. The objective of a submission or "compromissory" clause is to provide definitely for the settlement of a dispute. This the Department's formulation does, in the most straightforward manner, by simply saying that any dispute not otherwise settled may be taken to the Court. This ultimate step would presumably be resorted to, in actual practice, only very rarely. The Department's formulation is framed with a view to achieving harmonization of differences of opinions about the treaty before differences emerge into real disputes; is designed to give the greatest encouragement to resolving differences by ordinary diplomatic procedures; and allows every leeway to the two countries to refer any particular dispute to arbitration, or other forum, as they might mutually desire.

WJW
EDT:CP:HWalker:jn
October 22, 1951

CR
OCT 23 1951

FOOOO.02-0137

DRAFT TREATY
OF
FRIENDSHIP, COMMERCE AND NAVIGATION
BETWEEN THE
UNITED STATES OF AMERICA
AND

100611.9496-1651

TABLE OF CONTENTS*

Title	
Preamble	
Article I	General Equitable Treatment..... 2
II	Entry and Basic Personal Rights..... 3
III	Protection of Persons..... 4
IV	Workmen's Compensation and Social Security.... 5
V	Judicial Rights and Commercial Arbitration.... 6
VI	Protection of Property..... 7
VII	Business Activities of Persons and Companies.. 9
VIII	Employment, Professions & Non-profit Activities. 11
IX	Property Rights..... 12
X	Industrial Property..... 14
XI	Taxation of Persons and Companies..... 15
XII	Exchange Control..... 17
XIII	Commercial Travelers..... 19
XIV	Entry of Goods..... 20
XV	Customs Administration..... 22
XVI	Internal Treatment of Goods..... 23
XVII	State Trading..... 24
XVIII	Cartels and State Business Practices..... 25
XIX	Navigation..... 27
XX	Transit..... 29
XXI	General Exceptions..... 30
XXII	Definitions..... 32
XXIII	Territorial Application..... 33
XXIV	Settlement of Disputes..... 34
XXV	Termination of Existing Agreements..... 35
XXVI	Ratification and Termination..... 36
Protocol	 37

* The table of contents is included merely to facilitate study of the draft and not as a part of the proposed treaty.

The United States of America and the
desirous of strengthening the bonds of peace and friendship
traditionally existing between them and of encouraging closer
economic and cultural relations between their peoples, and
being cognizant of the contributions which may be made toward
these ends by arrangements encouraging mutually beneficial
investments, promoting mutually advantageous commercial inter-
course and otherwise establishing mutual rights and privileges,
have resolved to conclude a Treaty of Friendship, Commerce
and Navigation, based in general upon the principles of na-
tional and of most-favored-nation treatment unconditionally
accorded, and for that purpose have appointed as their Plen-
ipotentiaries,

The President of the United States of America:

and

who, having communicated to each other their full powers
found to be in due form, have agreed upon the following Arti-
cles:

Article I

- 2 -

Article I

Each Party shall at all times accord equitable treatment to the persons, property, enterprises and other interests of nationals and companies of the other Party.

Article II

Article II

1. Nationals of either Party shall be permitted to enter the territories of the other Party and to remain therein: (a) for the purpose of carrying on trade between the territories of the two Parties and engaging in related commercial activities; and (b) for other purposes subject to the laws relating to the entry and sojourn of aliens.

2. Nationals of either Party, within the territories of the other Party, shall be permitted: (a) to travel therein freely, and to reside at places of their choice; (b) to enjoy liberty of conscience; (c) to hold both private and public religious services; (d) to gather and to transmit material for dissemination to the public abroad; and (e) to communicate with other persons inside and outside such territories by mail, telegraph and other means open to general public use.

3. The provisions of the present Article shall be subject to the right of either Party to apply measures that are necessary to maintain public order and protect the public health, morals and safety.

Article III

- 4 -

Article III

1. Nationals of either Party within the territories of the other Party shall be free from molestations of every kind, and shall receive the most constant protection and security, in no case less than that required by international law.

2. If, within the territories of either Party, a national of the other Party is taken into custody, the nearest consular representative of his country shall on the demand of such national be immediately notified. Such national shall: (a) receive reasonable and humane treatment; (b) be formally and immediately informed of the accusations against him; (c) be brought to trial as promptly as is consistent with the proper preparation of his defense; and (d) enjoy all means reasonably necessary to his defense, including the services of competent counsel.

Article IV

Article IV

1. Nationals of either Party shall be accorded national treatment in the application of laws and regulations within the territories of the other Party that establish a pecuniary compensation, or other benefit or service, on account of disease, injury or death arising out of and in the course of employment or due to the nature of employment.

2. In addition to the rights and privileges provided in paragraph 1 of the present Article, nationals of either Party shall, within the territories of the other Party, be accorded national treatment in the application of laws and regulations establishing compulsory systems of social security, under which benefits are paid without an individual test of financial need: (a) against loss of wages or earnings due to old age, unemployment, sickness or disability, or (b) against loss of financial support due to the death of father, husband or other person on whom such support had depended.

Article V

Article V

1. Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies within the territories of the other Party, in all degrees of jurisdiction, both in pursuit and in defense of their rights. It is understood that companies of either Party not engaged in activities within the territories of the other Party shall enjoy such access therein without any requirement of registration or domestication.

2. Contracts entered into between nationals and companies of either Party and nationals and companies of the other Party, that provide for the settlement by arbitration of controversies, shall not be deemed unenforceable within the territories of such other Party merely on the grounds that the place designated for the arbitration proceedings is outside such territories or that the nationality of one or more of the arbitrators is not that of such other Party. No award duly rendered pursuant to any such contract, and final and enforceable under the laws of the place where rendered, shall be deemed invalid or denied effective means of enforcement within the territories of either Party merely on the grounds that the place where such award was rendered is outside such territories or that the nationality of one or more of the arbitrators is not that of such Party.

Article VI

Article VI

1. Property of nationals and companies of either Party shall receive the most constant protection and security within the territories of the other Party.

2. The dwellings, offices, warehouses, factories and other premises of nationals and companies of either Party located within the territories of the other Party shall not be subject to molestation or to entry without just cause. Official searches and examinations of such premises and their contents, when necessary, shall be made only according to law and with careful regard for the convenience of the occupants and the conduct of business.

3. Property of nationals and companies of either Party shall not be taken within the territories of the other Party except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.

4. Neither Party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other Party in the enterprises which they have established or in the capital, skills, arts or technology which they have supplied; nor shall either Party unreasonably impede nationals and companies of the other Party from obtaining on equitable terms the capital, skills, arts and technology it needs for its economic development.

5. Nationals and companies of either Party shall in no

case

- 8 -

case be accorded, within the territories of the other Party, less than national treatment and most-favored-nation treatment with respect to the matters set forth in paragraphs 2 and 3 of the present Article. Moreover, enterprises in which nationals and companies of either Party have a substantial interest shall be accorded, within the territories of the other Party, not less than national treatment and most-favored-nation treatment in all matters relating to the taking of privately owned enterprises into public ownership and to the placing of such enterprises under public control.

Article VII

Article VII

1. Nationals and companies of either Party shall be accorded national treatment with respect to engaging in all types of commercial, industrial, financial and other activity for profit (business activities) within the territories of the other Party, whether directly or by agent or through the medium of any form of lawful juridical entity. Accordingly, such nationals and companies shall be permitted within such territories: (a) to establish and maintain branches, agencies, offices, factories and other establishments appropriate to the conduct of their business; (b) to organize companies under the general company laws of such other Party, and to acquire majority interests in companies of such other Party; and (c) to control and manage enterprises which they have established or acquired. Moreover, enterprises which they control, whether in the form of individual proprietorships, companies or otherwise, shall, in all that relates to the conduct of the activities thereof, be accorded treatment no less favorable than that accorded like enterprises controlled by nationals and companies of such other Party.

2. Each Party reserves the right to limit the extent to which aliens may establish, acquire interests in, or carry on enterprises engaged within its territories in communications, air or water transport, banking involving depository or fiduciary functions, or the exploitation of land or other natural resources. However, new limitations imposed by either Party upon the extent to which aliens are accorded national treatment, with respect to carrying on such activities within its territories, shall not be applied as against enterprises which are engaged in such activities therein at the time such

new

new limitations are adopted and which are owned or controlled by nationals and companies of the other Party. Moreover, neither Party shall deny to transportation, communications and banking companies of the other Party the right to maintain branches and agencies to perform functions necessary for essentially international operations in which they are permitted to engage.

3. The provisions of paragraph 1 shall not prevent either Party from prescribing special formalities in connection with the establishment of alien-controlled enterprises within its territories; but such formalities may not impair the substance of the rights set forth in said paragraph.

4. Nationals and companies of either Party, as well as enterprises controlled by such nationals and companies, shall in any event be accorded most-favored-nation treatment with reference to the matters treated in the present Article.

Article VIII

--11--

Article VIII

1. Nationals and companies of either Party shall be permitted to engage, within the territories of the other Party, accountants and other technical experts, executive personnel, attorneys, agents and other specialists of their choice. Moreover, such nationals and companies shall be permitted to engage accountants and other technical experts regardless of the extent to which they may have qualified for the practice of a profession within the territories of such other Party, for the particular purpose of making examinations, audits and technical investigations for, and rendering reports to, such nationals and companies in connection with the planning and operation of their enterprises, and enterprises in which they have a financial interest, within such territories.

2. Nationals of either Party shall not be barred from practicing the professions within the territories of the other Party merely by reason of their alienage; but they shall be permitted to engage in professional activities therein upon compliance with the requirements regarding qualifications and competence that are applicable to nationals of such other Party.

3. Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to engaging in scientific, educational, religious and philanthropic activities within the territories of the other Party, and shall be accorded the right to form associations for that purpose under the laws of such other Party. Nothing in the present Treaty shall be deemed to grant or imply any right to engage in political activities.

Article IX

Netherlands

XVIII

- 12 -

Article IX

1. Nationals and companies of
shall be accorded, within the territories of the
United States of America:
 - (a) national treatment with respect to leasing land,
buildings and other real property appropriate to
the conduct of activities in which they are per-
mitted to engage pursuant to Articles VII and VIII
and for residential purposes and with respect to
occupying and using such property; and
 - (b) other rights in real property permitted by the
applicable laws of the states, territories and
possessions of the United States of America.
2. Nationals and companies of the United States of America
shall be accorded, within the territories of
, national treatment with respect to acquiring by
purchase, lease, or otherwise, and with respect to owning,
occupying and using land, buildings and other real property.
However, in the case of any such national domiciled in, or
any such company constituted under the laws of, any state,
territory or possession of the United States of America that
accords less than national treatment to nationals and companies
of in this respect,
shall not be obligated to accord treatment more favorable
in this respect than such state, territory or possession ac-
cords to nationals and companies of

3. Nationals

- 13 -

3. Nationals and companies of either Party shall be permitted freely to dispose of property within the territories of the other Party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition.

4. Nationals and companies of either Party shall be accorded within the territories of the other Party national treatment and most-favored-nation treatment with respect to acquiring, by purchase, lease, or otherwise, and with respect to owning and possessing, personal property of all kinds, both tangible and intangible. However, either Party may impose restrictions on alien ownership of materials dangerous from the standpoint of public safety and alien ownership of interests in enterprises carrying on particular types of activity, but only to the extent that this can be done without impairing the rights and privileges secured by Article VII or by other provisions of the present treaty.

5. Nationals and companies of either Party shall be accorded within the territories of the other Party national treatment and most-favored-nation treatment with respect to disposing of property of all kinds.

Article X

- 14 -

Article X

Nationals and companies of either Party shall be accorded, within the territories of the other Party, national treatment and most-favored-nation treatment with respect to obtaining and maintaining patents of invention, and with respect to rights in trade marks, trade names, trade labels and industrial property of every kind.

Article XI

- 15 -

Article XI

1. Nationals of either Party residing within the territories of the other Party, and nationals and companies of either Party engaged in trade or other gainful pursuit or in scientific, educational, religious or philanthropic activities within the territories of the other Party, shall not be subject to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, within the territories of such other Party, more burdensome than those borne by nationals and companies of such other Party.

2. With respect to nationals of either Party who are neither resident nor engaged in trade or other gainful pursuit within the territories of the other Party, and with respect to companies of either Party which are not engaged in trade or other gainful pursuit within the territories of the other Party, it shall be the aim of such other Party to apply in general the principle set forth in paragraph 1 of the present Article.

3. Nationals and companies of either Party shall in no case be subject, within the territories of the other Party, to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, more burdensome than those borne by nationals, residents and companies of any third country.

4. In the case of companies of either Party engaged in trade or other gainful pursuit within the territories of the other

- 16 -

other Party, and in the case of nationals of either Party engaged in trade or other gainful pursuit within the territories of the other Party but not resident therein, such other Party shall not impose or apply any tax, fee or charge upon any income, capital or other basis in excess of that reasonably allocable or apportionable to its territories, nor grant deductions and exemptions less than those reasonably allocable or apportionable to its territories. A comparable rule shall apply also in the case of companies organized and operated exclusively for scientific, educational, religious or philanthropic purposes.

5. Each Party reserves the right to: (a) extend specific tax advantages on the basis of reciprocity; (b) accord special tax advantages by virtue of agreements for the avoidance of double taxation or the mutual protection of revenue; and (c) apply special provisions in allowing, to non-residents, exemptions of a personal nature in connection with income and inheritance taxes.

Article XII

Article XII

1. Nationals and companies of either Party shall be accorded by the other Party national treatment and most-favored-nation treatment with respect to payments, remittances and transfers of funds or financial instruments between the territories of the two Parties as well as between the territories of such other Party and of any third country.

2. Neither Party shall impose exchange restrictions as defined in paragraph 5 of the present Article except to the extent necessary to prevent its monetary reserves from falling to a very low level or to effect a moderate increase in very low monetary reserves. It is understood that the provisions of the present Article do not alter the obligations either Party may have to the International Monetary Fund or preclude imposition of particular restrictions whenever the Fund specifically authorizes or requests a Party to impose such particular restrictions.

3. If either Party imposes exchange restrictions in accordance with paragraph 2 above, it shall, after making whatever provision may be necessary to assure the availability of foreign exchange for goods and services essential to the health and welfare of its people, make reasonable provision for the withdrawal, in foreign exchange in the currency of the other Party, of: (a) the compensation referred to in Article VI, paragraph 3, of the present Treaty, (b) earnings, whether in the form of salaries, interest, dividends, commissions, royalties, payments for technical services, or otherwise, and (c) amounts for amortization of loans, depreciation of direct investments, and capital transfers, giving consideration to special needs for other transactions. If more than one rate of exchange is in

- 16 -

is in force, the rate applicable to such withdrawals shall be a rate which is specifically approved by the International Monetary Fund for such transactions or, in the absence of a rate so approved, an effective rate which, inclusive of any taxes or surcharges on exchange transfers, is just and reasonable.

4. Exchange restrictions shall not be imposed by either Party in a manner unnecessarily detrimental or arbitrarily discriminatory to the claims, investments, transport, trade, and other interests of the nationals and companies of the other Party, nor to the competitive position thereof.

5. The term "exchange restrictions" as used in the present Article includes all restrictions, regulations, charges, taxes, or other requirements imposed by either Party which burden or interfere with payments, remittances, or transfers of funds or of financial instruments between the territories of the two Parties.

6. Each Party shall afford the other Party adequate opportunity for consultation at any time regarding application of the present Article.

Article XIII

- 19 -

Article XIII

Commercial travelers representing nationals and companies of either Party engaged in business within the territories thereof shall, upon their entry into and departure from the territories of the other Party and during their sojourn therein, be accorded most-favored-nation treatment in respect of the customs and other matters, including, subject to the exceptions in paragraph 5 of Article XI, taxes and charges applicable to them, their samples and the taking of orders, and regulations governing the exercise of their functions.

Article XIV

Article XIV

1. Each Party shall accord most-favored-nation treatment to products of the other Party, from whatever place and by whatever type of carrier arriving, and to products destined for exportation to the territories of such other Party, by whatever route and by whatever type of carrier, in all matters relating to customs duties and other charges, and with respect to all other regulations, requirements and formalities imposed on or in connection with imports and exports. A like rule shall apply with respect to the international transfer of payments for imports and exports.

2. Neither Party shall impose restrictions or prohibitions on the importation of any product of the other Party, or on the exportation of any product to the territories of the other Party, unless the importation of the like product of, or the exportation of the like product to, all third countries is similarly restricted or prohibited.

3. If either Party imposes quantitative restrictions on the importation or exportation of any product in which the other Party has an important interest:

(a) It shall as a general rule give prior public notice of the total amount of the product, by quantity or value, that may be imported or exported during a specified period, and of any change in such amount or period; and

(b) If it makes allotments to any third country, it shall afford such other Party a share proportionate to the amount of the product, by quantity or value, supplied by or to it during a previous representative period, due consideration being given to any special factors affecting the trade in such product.

4. Either

4. Either Party may impose prohibitions or restrictions on sanitary or other customary grounds of a non-commercial nature, or in the interest of preventing deceptive or unfair practices, provided such prohibitions or restrictions do not arbitrarily discriminate against the commerce of the other Party.

5. Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment by the other Party with respect to all matters relating to importation and exportation.

6. The provisions of the present Article shall not apply to advantages accorded by either Party:

- (a) to products of its national fisheries;
- (b) to adjacent countries in order to facilitate frontier traffic; or
- (c) by virtue of a customs union or free-trade area of which it may become a member, so long as it informs the other Party of its plans and affords such other Party adequate opportunity for consultation.

Article XV

- 22 -

Article XV

1. Each Party shall promptly publish laws, regulations and administrative rulings of general application pertaining to rates of duty, taxes or other charges, to the classification of articles for customs purposes, and to requirements or restrictions on imports and exports or the transfer of payments therefore, or affecting their sale, distribution or use; and shall administer such laws, regulations and rulings in a uniform, impartial and reasonable manner. As a general practice, new administrative requirements or restrictions affecting imports, with the exception of those imposed on sanitary grounds or for reasons of public safety, shall not go into effect before the expiration of 30 days after publication, or alternatively, shall not apply to products en route at time of publication.

2. Each Party shall provide an appeals procedure under which nationals and companies of the other Party, and importers of products of such other Party, shall be able to obtain prompt and impartial review, and correction when warranted of administrative action relating to customs matters, including the imposition of fines and penalties, confiscations, and rulings on questions of customs classification and valuation by the administrative authorities. Penalties imposed for infractions of the customs and shipping laws and regulations shall be merely nominal in cases resulting from clerical errors or when good faith can be demonstrated.

Article XVI

Article XVI

1. Products of either Party shall be accorded, within the territories of the other Party, national treatment and most-favored-nation treatment in all matters affecting internal taxation, sale, distribution, storage and use.

2. Articles produced by nationals and companies of either Party within the territories of the other Party, or by companies of the latter Party controlled by such nationals and companies, shall be accorded therein treatment no less favorable than that accorded to like articles of national origin by whatever person or company produced, in all matters affecting exportation, taxation, sale, distribution, storage and use.

Article XVII

Article XVII

1. Each Party undertakes (a) that enterprises owned or controlled by its Government, and that monopolies or agencies granted exclusive or special privileges within its territories, shall make their purchases and sales involving either imports or exports affecting the commerce of the other Party solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale; and (b) that the nationals, companies and commerce of such other Party shall be afforded adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases and sales.

2. Each Party shall accord to the nationals, companies and commerce of the other Party fair and equitable treatment, as compared with that accorded to the nationals, companies and commerce of any third country; with respect to: (a) the governmental purchase of supplies, (b) the awarding of concessions and other government contracts, and (c) the sale of any service sold by the Government or by any monopoly or agency granted exclusive or special privileges.

Article XVIII

Article XVIII

1. The two Parties agree that business practices which restrain competition, limit access to markets or foster monopolistic control, and which are engaged in or made effective by one or more private or public commercial enterprises or by combination, agreement or other arrangement among such enterprises, may have harmful effects upon commerce between their respective territories. Accordingly, each Party agrees upon the request of the other Party to consult with respect to any such practices and to take such measures as it deems appropriate with a view to eliminating such harmful effects.

2. The Parties recognize that conditions of competitive equality should be maintained in situations in which publicly owned or controlled trading or manufacturing enterprises of either Party engage in competition, within the territories thereof, with privately owned and controlled enterprises of nationals and companies of the other Party. Accordingly, such private enterprises shall, in such situations, be entitled to the benefit of any special advantages of an economic nature accorded such public enterprises, whether in the nature of subsidies, tax exemptions or otherwise. The foregoing rule shall not apply, however, to special advantages given in connection with: (a) manufacturing goods for government use, or supplying goods and services to the government for government use; or (b) supplying, at prices substantially below competitive prices, the needs of particular population groups for essential goods and services not otherwise practically obtainable by such groups.

3. No enterprise of either Party, including corporations, associations,

- 26 -

associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial, shipping or other business activities within the territories of the other Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.

Article XIX

Article XIX

1. Between the territories of the two Parties there shall be freedom of commerce and navigation.

2. Vessels under the flag of either Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that Party both on the high seas and within the ports, places and waters of the other Party.

3. Vessels of either Party shall have liberty, on equal terms with vessels of the other Party and on equal terms with vessels of any third country, to come with their cargoes to all ports, places and waters of such other Party open to foreign commerce and navigation. Such vessels and cargoes shall in all respects be accorded national treatment and most-favored-nation treatment within the ports, places and waters of such other Party; but each Party may reserve exclusive rights and privileges to its own vessels with respect to the coasting trade, inland navigation and national fisheries.

4. Vessels of either Party shall be accorded national treatment and most-favored-nation treatment by the other Party with respect to the right to carry all products that may be carried by vessel to or from the territories of such other Party; and such products shall be accorded treatment no less favorable than that accorded like products carried in vessels of such other Party, with respect to: (a) duties and charges of all kinds, (b) the administration of the customs, and (c) bounties, drawbacks and other privileges of this nature.

5. Vessels of either Party that are in distress shall be permitted to take refuge in the nearest port or haven of the other

- 28 -

the other Party, and shall receive friendly treatment and assistance.

6. The term "vessels", as used herein, means all types of vessels, whether privately owned or operated, or publicly owned or operated; but this term does not, except with reference to paragraph 5 of the present Article, include fishing vessels or vessels of war.

Article XX

- 29 -

Article XX

There shall be freedom of transit through the territories of each Party by the routes most convenient for international transit:

- (a) for nationals of the other Party, together with their baggage;
- (b) for other persons, together with their baggage, en route to or from the territories of such other Party; and
- (c) for products of any origin en route to or from the territories of such other Party.

Such persons and things in transit shall be exempt from customs duties, from duties imposed by reason of transit, and from unreasonable charges and requirements; and shall be free from unnecessary delays and restrictions. They shall, however, be subject to measures referred to in paragraph 3 of Article II, and to nondiscriminatory regulations necessary to prevent abuse of the transit privilege.

Article XXI

Article XXI

1. The present Treaty shall not preclude the application of measures:

- (a) regulating the importation or exportation of gold or silver;
- (b) relating to fissionable materials, to radioactive by-products of the utilization or processing thereof, or to materials that are the source of fissionable materials;
- (c) regulating the production of or traffic in arms, ammunition and implements of war, or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment;
- (d) necessary to fulfill the obligations of a Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests; and
- (e) denying to any company in the ownership or direction of which nationals of any third country or countries have directly or indirectly the controlling interest, the advantages of the present Treaty, except with respect to recognition of juridical status and with respect to access to courts.

2. The most-favored-nation provisions of the present Treaty relating to the treatment of goods shall not apply to advantages accorded by the United States of America or its Territories and possessions to one another, to the Republic of Cuba, to the Republic of the Philippines, to the Trust Territory of the Pacific Islands or to the Panama Canal Zone.

3. The

- 31 -

3. The provisions of the present Treaty relating to the treatment of goods shall not preclude action by either Party which is required or specifically permitted by the General Agreement on Tariffs and Trade during such time as such Party is a contracting party to the General Agreement. Similarly, the most-favored-nation provisions of the present Treaty shall not apply to special advantages accorded by virtue of the aforesaid Agreement.

4. Nationals of either Party admitted into the territories of the other Party for limited purposes shall not enjoy rights to engage in gainful occupations in contravention of limitations expressly imposed, according to law, as a condition of their admittance.

Article XXII

- 32 -

Article XXII

1. The term "national treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party.

2. The term "most-favored-nation treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of any third country.

3. As used in the present Treaty, the term "companies" means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit. Companies constituted under the applicable laws and regulations within the territories of either Party shall be deemed companies thereof and shall have their juridical status recognized within the territories of the other Party.

4. National treatment accorded under the provisions of the present Treaty to companies of shall, in any State, Territory or possession of the United States of America, be the treatment accorded therein to companies created or organized in other States, Territories, and possessions of the United States of America.

Article XXIII

Article XXIII

The territories to which the present Treaty extends shall comprise all areas of land and water under the sovereignty or authority of each Party, other than the Panama Canal Zone and the Trust Territory of the Pacific Islands.

Article XXIV

Article XXIV

1. Each Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other Party may make with respect to any matter affecting the operation of the present Treaty.

2. Any dispute between the Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the Parties agree to settlement by some other pacific means.

Article XXV

- 35 -

Article XXV

(Here specify outstanding treaties and agreements
between the two Parties that would be superseded
by the present Treaty.)

Article XXVI

Article XXVI

1. The present Treaty shall be ratified, and the ratifications thereof shall be exchanged at _____ as soon as possible.

2. The present Treaty shall enter into force one month after the day of exchange of ratifications. It shall remain in force for ten years and shall continue in force thereafter until terminated as provided herein.

3. Either Party may, by giving one year's written notice to the other Party, terminate the present Treaty at the end of the initial ten-year period or at any time thereafter.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Treaty and have affixed hereunto their seals.

DONE in duplicate, in the English and languages, both equally authentic, at _____, this _____ day of _____, one thousand nine hundred fifty _____.

PROTOCOL

PROTOCOL

At the time of signing the Treaty of Friendship, Commerce and Navigation between the United States of America and the undersigned Plenipotentiaries, duly authorized by their respective Governments, have further agreed on the following provisions, which shall be considered integral parts of the aforesaid Treaty:

1. The term "access" as used in Article V, paragraph 1, comprehends, among other things, legal aid and security for costs and judgment.

2. The provisions of Article VI, paragraph 3, providing for the payment of compensation shall extend to interests held directly and indirectly by nationals and companies of either Party in property which is taken within the territories of the other Party.

3. With reference to Article VII, paragraph 4, either Party may require that rights to engage in mining on the public domain shall be dependent on reciprocity.

4. The provisions of Article XVII, paragraph 2(b) and (c), and of Article XIX, paragraph 4, shall not apply to postal services.

5. The provisions of Article XXI, paragraph 2, shall apply in the case of Puerto Rico regardless of any change that may take place in its political status.

6. Article XXIII does not apply to territories under the authority of either Party solely as a military base or by reason of temporary military occupation.

IN WITNESS WHEREOF

11
13
50

- 38 -

IN WITNESS WHEREOF the respective Plenipotentiaries
have signed this Protocol and have affixed hereunto their
seals.

DONE in duplicate,

at _____, this _____ day
of _____ one thousand nine hundred fifty _____.